IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 7.9.2007

CORAM:

THE HONOURABLE MR.JUSTICE ELIPE DHARMARAO
AND
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

Writ Petition No.18920 of 2007
AND
M.P.Nos.1 and 3 of 2007

1.Union of India,
rep.by the Secretary,
Ministry of Company Affairs,
Shastri Bhavan,
New Delhi.

2.The Director,
Ministry of Company Affairs,
New Delhi.

3.Mr.R.Vasudevan ... Petitioners

Vs.

1.Dr.M.M.Cholan
2.Mr.B.A.M.P.Ratnasamy
3.The Registrar,
Central Administrative Tribunal ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the third respondent in O.A.No.531 of 2006 dated 17.11.2006 and quash the same and dismiss the O.A.

For petitioners : Mr.V.T.Gopalan, ASG for
Mr.P.Wilson, ASG

For R.1 : Mr.S.Veera Raghavan, S.C. for
Mr.Dalit Tiger C.Ponnusamy

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O R D E R

ELIPE DHARMARAO, J.

The first respondent herein belongs to the Indian Company Law Service. He was transferred to Chennai from the Post of Deputy Director, Policy, Ministry of Company Affairs, New Delhi, by an order dated 13.12.2005, at his request. But, within a period of seven months, he was once again transferred from the said post to Calcutta as Deputy Director (Inspection) by order dated 17.7.2006. Challenging the said order, the first respondent herein has filed O.A.No.531 of 2006 before the Tribunal on the averments that as per the transfer policy issued by the Government, no transfer can be made within a period of three years and as such, the impugned order of transfer passed within a period of seven months is liable to be set aside. It is further stated that the order of transfer is against the Government Order dated 30.9.2002 and was passed at the instance of the third petitioner herein viz. the Regional Director, Southern Region and who from the beginning does not want the first respondent to continue in Chennai. It is further stated that the first respondent has made representation dated 30.6.2006, but, in spite of that, the transfer order has been passed. He further submitted that his daughter was studying 1st year B.Sc. in Women's Christian College, Chennai and his son is studying in plus one in SBOA School, Chennai and the transfer order has been made in the middle of the academic year.

2. The petitioners and the second respondent herein, who are the respondents 1 to 4 in the O.A. have filed a reply statement denying the allegations of the applicant and further submitting that the Central Bureau of Investigation had filed a case of disproportionate assets against the applicant, and on their recommendations, the applicant was placed under suspension w.e.f. 10.7.2000. On the recommendations of the CBI and the concurrence of the Central Vigilance Commission, sanction for prosecution had been given for the prosecution of the applicant under the Prevention of Corruption Act on 31.3.20003 and the case is pending in the special CBI Court, Chennai. The suspension of the applicant was revoked on 16.3.2005 and he was posted as Deputy Director at Headquarters of Ministry of Company Affairs, Shastri Bhavan, New Delhi. Later, by the order dated 13.12.2005, the applicant was transferred on his own request to the post of Deputy Official Liquidator in the Office of the Official Liquidator, High Court, Chennai and as the said transfer from Headquarters to Chennai was on his own request, the applicant cannot claim that this order was also issued on administrative exigencies.

3. It is further submitted that the transfer order has been issued on 17.7.2006 and the next day, the applicant has approached the Tribunal, without exhausting the opportunity available to him. Under Section 20 of the CAT Act, an employee should avail of all the remedies available to him

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under the service rules for redressal of grievances before approaching the Tribunal and the Tribunal shall not, ordinarily, admit an application unless it is satisfied that the applicant had availed of all the remedies available to him. It was felt, on administrative reasons, that a person who is more conversant with the liquidation proceedings and having more exposure in a bigger Official Liquidator's Office would be more appropriate for posting as Deputy Official Liquidator at Chennai and accordingly, Mr.B.A.M.P.Rathnasami was posted as against the applicant. The transfer policy referred to by the applicant has no relevance as far as his case is concerned as the normal Annual Rotational Transfer Policy is not applicable in his case as he was transferred on administrative exigencies. The transfer policy is devised by the Administrative Head viz. the Secretary to the Government and has no statutory sanction and, as such, at the best, it can be considered only as guideline and is not mandatory and where public interest has conflict with the personal interest of an individual official, the former will prevail over the latter and the same cannot be questioned when the Administrative Head has exercised his power diligently. Further giving the details of postings of the applicant/first respondent, during his service career, the writ petitioners would submit that out of his 16 years of service, the applicant had sought for his retention in Chennai itself for about 12 years under one pretext or other and wherever possible, the Ministry had considered his request sympathetically and accommodated. Although the transfer has been effected before completion of three years, yet, the Government has exercised its administrative powers and transferred the applicant in public interest.

4. It is further submitted that the third writ petitioner is the Head of Department of the Southern Region with limited powers and he is the competent authority in respect of transfers of 'B', 'C' and 'D' grade officials only within his region and he has no say in the matter of the transfer of the ICLS Officers belonging to Grade 'A', unless specific suggestions are called for by the first respondent, which are not necessarily binding on the first writ petitioner. The transfer is decided by the Ministry viz. the Secretary (first writ petitioner) being the competent authority in such matters and the third writ petitioner is not privy to any decision regarding transfers and postings. The transfer and deployment of ICLS officers is the prerogative of the Government and not that of the third petitioner herein. Each case was considered by the Ministry independently and the transfer of the applicant was not influenced by any reference or recommendation made by the third respondent as alleged by the applicant.

5. The applicant/first respondent herein has filed a rejoinder refuting the contents of the counter filed by the writ petitioners herein before the Tribunal stating that it is the normal practice in the Ministry of Company Affairs that an Officer is retained in his post for a period of three years in case of single-officer stations and about five years in case of multiple officer stations and the Ministry follows this practice

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for almost all officers. Some officers have been retained in their posts for more than five years and in some cases even upto seven years, however, in the applicant's case alone, he has been transferred in the course of a year or even less many times. It is settled law that the administrative instructions are applicable when the rules are silent on a particular aspect and therefore, the first writ petitioner cannot be allowed to escape from his responsibilities by reducing the decision to a 'guideline'. The case of disproportionate assets has no relevance to the case at hand.

6. The applicant/first respondent further submitted that the Officer chosen to replace him as Deputy Official Liquidator does not have exposure in a bigger Official Liquidator's office. The successor's only experience in the Official Liquidator's office is as Deputy Official Liquidator, Chennai some time earlier and in any case, since the first writ petitioner has already transferred a more experienced officer viz. Mr.M.Subbarayulu, out of the Official Liquidator's office, who has earlier worked in independent charge of the Official Liquidator's office, Hyderabad. In fact, the officer transferred out, viz. Mr.M.Subbarayulu, has more experience in liquidation proceedings than the officer brought in place of the applicant viz. Mr.B.A.M.P.Rathinasami and therefore, the claim that the transfer of the applicant was effected in order to have a person with more experience in the liquidation proceedings, sounds hollow and is not in consonance with facts.

7. The applicant has further submitted that he was transferred about ten times in his career spanning 16 years with the Ministry, including five years spent under suspension and thus, effectively, the applicant has been transferred by the Ministry ten times in 11 years of service and he was never allowed to complete his tenure at Chennai, except for the first posting. The applicant, relying on two letters dated 31.1.2006 and 1.2.2006, has submitted that from these letters it is clear that within one and a half months of the posting of the applicant, as Deputy Official Liquidator, Chennai, the third writ petitioner has brought out certain acts alleged to have been committed by the applicant and therefore, he fears that the decision of the first writ petitioner to transfer him out of the Southern Region is based on the one-sided reports submitted by the third writ petitioner with mala fide intentions.

8. A reply counter has also been filed by the writ petitioners and the second respondent herein before the Tribunal, reiterating their stand, extracted supra.

9. A separate counter affidavit has been filed by the third petitioner before the Tribunal stating that the competent authority to make transfers in the case of officers belonging to Group 'A' service, to which the applicant belongs, is the Secretary, Ministry of Company Affairs, New Delhi and thus, he has no absolutely no role in the matter of transfer of the applicant.

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10. The Tribunal, considering the case put-up on either side and observing that the action of the writ petitioners in transferring the applicant/first respondent is arbitrary, has allowed the said O.A., setting aside the impugned transfer order, insofar as the applicant is concerned. Aggrieved, the respondents 1 to 3 before the Tribunal, have come forward to file this writ petition.

11. Mr.V.T.Gopalan, the learned Additional Solicitor General appearing for the petitioners would submit that the Tribunal has failed to consider that the transfer of the first respondent has been effected only in the public interest for which no mala fides can be attributed and the first respondent was transferred from Chennai to Kolkata due to administrative exigencies and the said transfer is not an isolated one being related to the first respondent alone and these were annual rotational transfers and cannot be construed to be mid-term transfers. The learned Additional Solicitor General would further submit that if the grounds taken by the Tribunal are allowed to remain, it will tantamount to permitting the Tribunal to lay down new law and rules governing transfer, which are contrary to the law laid down by the Honourable Supreme Court. The learned Additional Solicitor General would further argue that even if it is held that the impugned transfer is in violation of the transfer policy of the Government, which is only recommendatory but not mandatory, since it is made in the interest of the public, it cannot be interfered with by the Court. On such grounds, he would pray to set aside the order passed by the Tribunal.

12. On the contrary, the learned senior counsel appearing for the first respondent would submit that the impugned transfer order has been passed only to victimise the first respondent, which fact has well been taken into consideration by the Tribunal, in the light of various judgments of the Honourable Supreme Court and the Tribunal has considered all the facts and circumstances of the case in their proper perspective and has arrived at an unerring conclusion of quashing the impugned transfer order and the same needs no interference from this Court and would pray to dismiss this writ petition.

13. The learned Additional Solicitor General, while arguing that Courts should not normally interfere with the the transfer of employees, which is prerogative of the authorities, except where the transfer order is shown to be vitiated by mala fides or in violation of any statutory provision or has been passed by an authority not competent to pass such an order and the first respondent should have approached his higher authorities by way of representation to consider his case instead of approaching the legal forum, has cited the following judgments:

1. STATE OF U.P. AND OTHERS vs. GOBARDHAN LAL [(2004) 11 SCC 402],
2. STATE OF U.P. AND ANOTHER vs. SIYA RAM AND ANOTHER [(2004) 7 SCC 405],

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3. SHILPI BOSE (MRS) AND OTHERS vs. STATE OF BIHAR AND OTHERS (1991 SUPP. (2) SCC 659),

4. UNION OF INDIA AND OTHERS vs. S.L.ABBAS [(1993) 4 SCC 357].

14. In STATE OF U.P. AND OTHERS vs. GOBARDHAN LAL [(2004) 11 SCC 402], their Lordships of the Honourable Apex Court have held as follows:

"It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

15. In STATE OF U.P. AND ANOTHER vs. SIYA RAM AND ANOTHER [(2004) 7 SCC 405], their Lordships of the Honourable Apex Court have held:

"The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions

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prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned."

16. In SHILPI BOSE (MRS) AND OTHERS vs. STATE OF BIHAR AND OTHERS (1991 SUPP. (2) SCC 659), the Honourable Apex Court has held as follows:

"The courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order; instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest...."

17. In UNION OF INDIA AND OTHERS vs. S.L.ABBAS [(1993) 4 SCC 357], the Honourable Apex Court has held:

"An order of transfer is an incident of Government service. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The same guideline however does not confer upon the Government employee a legally enforceable right. Executive instructions are in the nature of guidelines. They do not have statutory force."

18. There is no quarrel with regard to the propositions laid down by the Honourable Apex Court in the above judgments. This Court is well aware that the Courts will not interfere with the transfer of an employee by the employer, unless it is tainted by mala fides. Since in the case on hand, the consistent case of the first respondent is that the impugned transfer order is tainted with mala fides, at the instance of the third

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writ petitioner herein, if the first respondent is able to prove the same, then, as per the proposition laid down by the Honourable Apex Court, this Court, while exercising its extraordinary jurisdiction under Article 226 of the Constitution of India, can very well cause its interference into such a tainted transfer order effected.

19. On the other hand, the learned senior counsel appearing for the first respondent would cite the following judgments:

1. C.S.ROWJEE AND OTHERS vs. STATE OF ANDHRA PRADESH AND OTHERS (AIR 1964 SC 962),
2. D.D.SURI vs. A.K.BARREN AND OTHERS (AIR 1971 SC 175),
3. THE STATE OF HARYANA AND OTHERS vs. RAJENDRA SAREEN (AIR 1972 SC 1004) and
4. EXPRESS NEWSPAPERS PVT. LTD. AND OTHERS vs. UNION OF INDIA AND OTHERS (AIR 1986 SC 872).

20. In C.S.ROWJEE AND OTHERS vs. STATE OF ANDHRA PRADESH AND OTHERS (AIR 1964 SC 962), the Constitutional Bench of the Honourable Apex Court has held:

> "It is true that allegations of mala fides and of improper motives on the part of those in power are frequently made and their frequency has increased in recent times. It is also somewhat unfortunate that allegations of this nature which have no foundation in fact, are made in several of the cases which have come up before the Supreme Court and other Courts and it is found that they have been made merely with a view to cause prejudice or in the hope that whether they have basis in fact or not, some of it at least might stick. Consequently it has become the duty of the Court to scrutinise these allegations with care so as to avoid being in any manner influenced by them, in cases where they have no foundation in fact. In this task which is thus cast on the courts it would conduce to a more satisfactory disposal and consideration of them, if those against whom allegations are made came forward to place before the court either their denials or their version of the matter, so that the Court may be in a position to judge as to whether the onus that lies upon those who make allegations of mala fides on the part of authorities have discharged their burden of proving it. In the absence of such affidavits or of materials placed before the Court by these authorities, the Court is left to judge of the veracity of the allegations merely on tests of probability with nothing more substantial by way of answer."

21. In D.D.SURI vs. A.K.BARREN AND OTHERS (AIR 1971 SC 175) cited by the learned senior counsel for the first respondent, a three Judge Bench of the Honourable Apex Court has held:

> "Where serious allegations including those of improper motive and mala fides have been made, in the writ petition, by a senior member of the Indian Administrative Service against other senior

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officers and the State Government, the High Court is not justified in dismissing the petition in limine by just writing the word 'dismissed', even without calling for affidavits in reply to the allegations contained in the petition. In such circumstances the High Court ought to call upon the opposite parties to make a return and then consider whether allegations have been proved or not. If it is found that the petitioner has made reckless allegations which are not founded on facts it would be in the fitness of things to take suitable action against him. But if on the other hand it is found that there is substance in his allegations there is no reason why the High Court should not grant him the necessary relief if a proper case is made out for doing so. It is quite possible that in a given case the proper course for a writ petitioner should be to seek relief by way of a suit if there are several disputed questions of fact but all these matters can be decided only if the petition is admitted and it is heard after the return has been filed by the opposite parties."

22. In THE STATE OF HARYANA AND OTHERS vs. RAJENDRA SAREEN (AIR 1972 SC 1004), cited by the learned senior counsel for the first respondent, their Lordships of the Honourable Apex Court have held as follows:

"When in a writ petition a Government order is challenged on more than one allegation of mala fides, the proper approach of the High Court should be to consider all the allegations together and find out whether those allegations when established, are sufficient to prove malice or ill-will on the part of the official concerned and whether the impugned order i the result of such malice or ill-will."

23. In EXPRESS NEWSPAPERS PVT. LTD. AND OTHERS vs. UNION OF INDIA AND OTHERS (AIR 1986 SC 872), a three Judge Bench of the Honourable Apex Court has held as follows:

"Where mala fides are alleged, it is necessary that the person against whom such allegations are made should come forward with an answer refuting or denying such allegations. For otherwise such allegations remain unrebutted and the Court would in such a case be constrained to accept the allegations so remaining unrebutted and unanswered on the test of probability. It is not for the parties to say what is relevant or not. The matter is one for the Court to decide."

24. From a perusal of the entire materials placed on record and upon hearing the learned counsel on either side, we are able to find that the relationship between the third writ petitioner, Mr.Bennerjee, Official Liquidator of the High Court of Madras and the first respondent is strained rather bitter. The Tribunal in its vivid order has observed that the officials have produced before it the letters written to the third writ petitioner by Mr.H.Bannerjee, Official Liquidator dated 20.3.2006,

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21.3.2006, 29.3.2006, 3.4.2006, 4.4.2006, 6.4.2006 and 13.4.2006 but not the letters dated 31.1.2006 and 1.2.2006 written by the third writ petitioner herein to the Joint Secretary to the Government of India, Ministry of Company Affairs, New Delhi. On our direction, the copies of the said letters are produced before this Court.

25. From the language couched in those two letters, in the nature of complaint against the first respondent made by the third writ petitioner to the higher-ups i.e. the Joint Secretary to the Government of India, suggesting that the first respondent should not be assigned duties where public contacts were involved and to designate him as Deputy Official Liquidator (Administrator) and that he should not be entrusted with the task of routine liquidation matters, we are able to assess that the apprehension expressed by the first respondent that only at the behest of the third writ petitioner, he was transferred from Chennai, appears to be correct. Though, Mr.V.T.Gopalan, the learned Additional Solicitor General, in unequivocal terms has contended that the third petitioner has no say in matters of transfers of 'A' grade officers like the first respondent herein and even if he suggests/recommends, it is not binding on the officials, by the above letters, which were followed by the impugned transfer order, shunting the first respondent to Kolkatta, within seven months of his transfer on request, it is clear that the third writ petitioner is able to influence the transfer order, that too to the detriment of the first respondent. After going through the contents of the said letters, we have no hesitation to come to a conclusion that this is nothing but character assassination of the first respondent, behind his back and running the show behind the curtains.

26. The reason offered by the writ petitioners that the transfer of the first respondent was effected due to administrative exigencies, appears to be invented for the purpose of the case, since the same has been effectively countenanced by the first respondent with example that his successor was not that much senior to handle the seat, as has been averred by the writ petitioners. We are also able to understand that the writ petitioners have successfully avoided to produce the copies of the said letters before the Tribunal since they would tell upon the third writ petitioner. We are also able to understand that the third writ petitioner and Mr.H.Bannerjee, the then Official Liquidator of the High Court of Madras have successfully put the first respondent at a disadvantageous position and for the reasons better known to them have joined hands with each other to send the first respondent out of Chennai city, which was implemented by the higher-ups, by transferring the first respondent to Kolkatta, within seven months of his transfer to Chennai.

27. Though serious allegations are levelled against the third writ petitioner by the first respondent, he filed a simple counter, formally denying the allegations of the first respondent, without either refuting or answering the allegations of the first respondent. Therefore, as per the judgment of the three Judge Bench judgment of the Apex Court in

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EXPRESS NEWSPAPERS PVT.LTD AND OTHERS vs. UNION OF INDIA [AIR 1986 SC 872], since the third writ petitioner has not come forward with an answer refuting or denying such allegations, such allegations remain unrebutted.

28. In the light of the entire discussion and following the purport of the above judgments of the Apex Court, we are thoroughly satisfied and have no hesitation to hold that the first respondent has succeeded in establishing the malice, which resulted in his pre-mature transfer from Chennai to a far off place viz. Kolkatta, based on the letters of the third writ petitioner, without giving any opportunity for him to offer his explanation and thus violating the principles of natural justice also, behind the back of the first respondent and causing prejudice to the first respondent.

29. At this juncture, the learned senior counsel for the first respondent would cite an unreported judgment of this Court made in W.P.No.13022 of 2007, dated 12.7.2007, wherein under similar circumstances, this Court has quashed the transfer order being tainted with malice and passed not as an order of transfer simpliciter to meet the administrative exigencies, but was passed as a punishment without following the rules. Since in the case on hand, as has already been observed supra, the first respondent has been victimised at the hands of the third writ petitioner and the transfer order has been passed being influenced by the letters addressed by the third writ petitioner to the higher authorities, the same could also be termed as not one passed to meet the administrative exigencies but only as a punishment without following the rules.

30. The Government of India, Ministry of Finance and Company Affairs, Department of Company Affairs, by their circular in F.No.A-22011/2/2002-Ad.II, dated 30.9.2002, has framed guidelines for the transfer policy of the Department of company Affairs. Para No.4 of the said circular reads as follows:

> "The annual rotational transfers of Group 'A' and 'B' officers will be on the following lines:
>
> Change of office:- On completion of 3 years within the same office.
>
> Change of station:-
>
> - 3 years (a) where there is only one field office of the Department in that particular station
>
> (b) where there are more than one field office of this Department in the particular station, but post(s) of grade to which the officer belongs is/are not available there

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- 5 years where there are more than one field offices of this Department in the particular station and post(s) of some grade to which the officer belongs is/are available there."

31. As has been submitted by the first respondent, even though many times he was transferred to Chennai, excepting on the first occasion, he was never allowed to complete even one year at Chennai, even though as per the transfer policy of the Government, the employee could be transferred from the office only on completion of three years within the same office. It could also be seen from the details of transfer and postings submitted by the Official Liquidator that the second respondent herein, who replaced the first respondent, has worked for more than 17 years in one capacity or other at Chennai. At this juncture, it has been strenuously argued on behalf of the writ petitioners that the transfer policy is only recommendatory and not mandatory. In the backdrop of the above discussed proved mala fide against the interest of the first respondent, who strived hard to get transfer to Chennai, we find it unnecessary to go in detail as to whether the transfer policy of the writ petitioners is recommendatory or mandatory.

32. There is more than sufficient material on record to show that as a practice the writ petitioners are following that the general transfer is either for three years/five years. There is no doubt that the Government is always at liberty to transfer its employees for administrative exigencies. However, in the case on hand, as has already been discussed supra, since the impugned transfer has been effected with a mala fide intention, offering reasons to substantiate the same, when it was questioned before the Court of law, as has been held by the Apex Court in the above judgments, this Court could very well exercise its extraordinary jurisdiction under Article 226 of the Constitution of India, to set right an illegality committed.

33. The other allegations made against the first respondent that a criminal case under Prevention of Corruption Act is pending against him and he was placed under suspension for a period of five years, has no relevance to the case on hand. It is brought to our notice that the CBI has given two No Objection Certificates in favour of the first respondent, based on which his suspension was revoked.

34. Regarding the argument advanced on the part of the writ petitioners, that before approaching the Tribunal, the first respondent has not exhausted all the remedies, it is to be mentioned that under Section 20 of the CAT Act, an employee should avail of all the remedies available to him under the service rules for redressal of grievances before approaching the Tribunal and the Tribunal shall not ordinarily admit an application, unless it is satisfied that the applicant had availed of all the remedies available to him. In the case on hand, the

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Tribunal, having found that an illegality has been committed to the first respondent in transferring him to a far off place i.e. Kolkatta within seven months of his transfer to Chennai, has admitted the matter and enquired into the matter in detail. As has already been extracted supra, there is no complete bar for the Tribunal in admitting such matters and it is a matter of subjective satisfaction before admitting the matter. Since the Tribunal, while exercising its jurisdiction conferred under the Act, has arrived at a subjective satisfaction to admit and enquire into the matter, it cannot at all be found fault with. Therefore, we do not find any illegality in the Tribunal entertaining the Original Application filed by the first respondent herein and adjudicating upon the same, after due opportunity for both the parties.

35. As has been observed supra, the third writ petitioner and Mr.Bennerjee, the then Official Liquidator of the High Court of Madras are the root cause of the entire trouble. After going through the materials placed on record and the contents of the letters addressed by the third writ petitioner to the first writ petitioner, we hold that the mind of the third writ petitioner is very clear that he does not want to continue the first respondent in Chennai. Though the Government has considered the request of the first respondent and posted him at Chennai, the third writ petitioner, joining hands with Mr.Bennerjee, had made it very difficult for the first respondent to continue in the post, which was represented by the first respondent to the higher officials through various representations with no fruitful result. It has been brought to the notice of this Court that Mr.Bennerjee has already been transferred from Chennai. Therefore, we recommend that for smooth running of the office at Chennai region and to bring normalcy in the working conditions of the employees like the first respondent herein and to ensure non-victimisation of the employees like the first respondent, the third writ petitioner has to be transferred to a different place with immediate effect.

The Tribunal, having considered all the facts and circumstances of the case and applying the correct principle of law, has arrived at an irresistible conclusion of allowing the Application filed by the first respondent. On re-appreciation of the entire materials placed on record in the light of the vehement arguments advanced on either side, we are unable to find any illegality or irregularity in the well considered and

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merited order passed by the Tribunal. Accordingly, this writ petition is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

Rao

To
1. The Registrar,
Central Administrative Tribunal,
Chennai.

2. The Secretary,
Union of India,
Ministry of Company Affairs,
Sastri Bhavan,
New Delhi.

3. The Director,
Ministry of Company Affairs,
New Delhi.

+ 2 CC To Mr.Dalit Tiger C.Ponnusamy, Advocate SR NO.55911

+ 1 CC To Mr. P.Wilson, Asst. Solicitor General of India, Advocate SR NO.56133

Order in W.P.No.18920 of 2007 and
M.Ps.1 & 3/2007

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